

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
CHESAPEAKE UTILITIES CORPORATION FOR)
APPROVAL OF A CHANGE IN ITS ENVIRON-) PSC DOCKET NO. 03-476
MENTAL RIDER RATE TO BE EFFECTIVE)
DECEMBER 1, 2003)
(FILED NOVEMBER 3, 2003))

ORDER NO. 6488

AND NOW, this 19th day of October, A.D., 2004;

WHEREAS, the Commission has received and considered the September 16, 2004 Findings and Recommendations of the Hearing Examiner in the above-captioned application, in which he reviewed the record developed after a duly noticed public evidentiary hearing and evening public comment hearing; and

WHEREAS, the record resulted in no contested issues or adverse public comments to the application, and the Hearing Examiner recommends approval of the application, including the proposed rates, charges, and other tariff provisions contained therein; now, therefore,

IT IS ORDERED:

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the September 16, 2004 Findings and Recommendations of the Hearing Examiner, appended to the original hereof as Attachment "A".

2. That Chesapeake Utilities Corporation shall file such tariff sheets as may be needed consistent with this Order.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

A T T A C H M E N T "A"

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IN THE MATTER OF THE APPLICATION)
OF CHESAPEAKE UTILITIES)
CORPORATION FOR APPROVAL OF A)
CHANGE IN ITS ENVIRONMENTAL RIDER) PSC DOCKET NO. 03-476
RATE TO BE EFFECTIVE DECEMBER 1,)
2003 (FILED NOVEMBER 3, 2003))

**FINDINGS AND RECOMMENDATIONS
OF THE
HEARING EXAMINER**

DATED: September 20, 2004

**ROBERT P. HAYNES
HEARING EXAMINER**

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Robert P. Haynes, duly appointed Hearing Examiner in this Docket pursuant to 26 Del. C. §502 and 29 Del. C. Ch. 101, by Commission Order No. 6307, dated November 26, 2003, reports to the Commission as follows:

I. APPEARANCES

On behalf of the Applicant, Chesapeake Utilities Corporation-Delaware Division ("Chesapeake" or "Company"):

PARKOWSKI, GUERKE & SWAYZE, P.A.
BY: WILLIAM A. DENMAN, ESQUIRE

On behalf of the Public Service Commission Staff ("Staff"):

MURPHY, SPADARO & LANDON,
BY: FRANCIS J. MURPHY, ESQUIRE

II. BACKGROUND

1. On November 3, 2003, Chesapeake filed with the Public Service Commission of the State of Delaware ("Commission") an application for approval of a change in its Environmental Rider ("ER") rate from the existing rate of \$0.0284 per hundred cubic feet ("Ccf") to \$0.0098 per Ccf, effective for service on and after December 1, 2003.

2. Pursuant to 26 Del. C. §§ 304 and 306(a)(2), the Commission, in PSC Order No. 6307, issued November 26, 2003, allowed the rate change to go into effect on December 1, 2003 on a temporary basis, subject to refund, and designated this Hearing Examiner to preside over the evidentiary hearings and to prepare

findings and recommendations. The Commission did not receive any petition to intervene, and Staff and the Company submitted a proposed procedural schedule, which was approved.

3. Pursuant to the approved procedural schedule, Staff filed direct testimony and the Company filed rebuttal testimony. A duly noticed public comment session was held at the Commission's Dover office on the evening of Tuesday, July 13, 2004, and a duly noticed evidentiary hearing was held at the Commission's Dover office on July 14, 2004. No person from the public appeared at the public comment session or the hearing, or filed written comments in response to the public notice.

4. Insofar as there was no material issue in dispute, the parties did not submit post-hearing briefs. At the conclusion of the hearing, the record consisted of six exhibits and a 34 page verbatim transcript of the hearings. I have reviewed all the evidence and, based thereon, I submit these findings and recommendations.

III. SUMMARY OF THE EVIDENCE

A. Chesapeake Utilities Corporation's Case

5. The Company presented the direct testimony and exhibits of Jeffrey Tietbohl, its Controller of Natural Gas, and Jennifer A. Clausius, Rate Analyst, in support of its application. Mr. Tietbohl testified on the proposed recovery of the Company's costs incurred in connection with the environmental clean-up and related costs for the former Dover Gas Light and

Smyrna Gas sites. The Smyrna site was added as part of the settlement of the Company's last base rate case at Docket 01-307, as approved in PSC Order No. 5932 issued April 16, 2002. Mr. Tietbohl also presented a status report of the environmental litigation against the sites' prior owner, General Public Utilities Corporation (GPU), as required by Commission Order No. 5491 dated July 12, 2000.

6. Company witness Clausius testified to the calculations to arrive at the application's requested rate. The current year's costs are recovered based upon a five-year amortization, which is the cost recovery method approved in PSC Order No. 4104 (Dec. 19, 1995) at Docket No. 95-73. The Company's present application seeks to reduce the ER rate from \$0.0284 per Ccf to \$0.0098 per Ccf. As a result of the settlement of the GPU litigation, the Company received a net payment in the amount of \$1,150,000 in August of 2003. Because of the colder than normal weather experienced during the calculation year, Ms. Clausius testified that there is an over collection balance of approximately \$134,000 (Ex. 4 at 7). As a result of the net settlement payment and over collection balance, after taking into consideration the actual environmental expenses incurred during the current calculation year, Ms. Clausius testified that the Company experienced a net credit of \$1,101,223.95 during the year (Ex. 4 at 7). The total credit for the ECY was amortized over five years subtracting out the deferred tax credit for each year,

resulting in the recovery amount for each period. The actual recovery amount for the period ended September 30, 2003 included in the Environmental Rider rate level effective December 1, 2003 is a credit of \$174,519.28 (Ex. 4 at 7-8).

7. Ms. Clausius indicated that the application results in an annual decrease of 1.29%, or \$13.76 for a residential heating customer using 740 Ccf per year (Ex. 4 at 10). An average residential heating customer using 120 Ccf per month will experience a monthly decrease of 1.42% or \$2.23 (Ex. 4 at 10).

8. Company witness Clausius stated that the person primarily responsible for managing the Company's environmental activities first reviews the invoices, which are then submitted to senior management for final review and approval for payment (Ex. 4 at 6).

9. Pursuant to prior Commission Orders, the Company submitted a status report on its environmental litigation against FirstEnergy, which is the successor to GPU (Ex. 2, JRT-1). According to Mr. Tietbohl, the Consent Decrees arising out of this litigation have been approved by the United States District Court and all payments required under the settlement to be made to Chesapeake have been made. As a result of the settlement, Chesapeake is resolved of all governmental environmental liability with respect to future remedial action at the sites, subject only to standard re-openers that are required under all federal settlements. (Ex. 2 at 6).

B. Commission Staff's Case

10. The Commission Staff presented its direct case through the direct testimonies of Funmi I. Jegede, Public Utilities Analyst (Ex. 6) and Mary E. Paskey, Public Utilities Analyst (Ex. 5). Ms. Paskey testified that she conducted a field examination in order to review the claimed expenses. The examination involved a thorough review of 100% of the invoices claimed in the filing. Ms. Paskey concluded that the claims were proper (Ex. 5, at 5).

11. She also verified the calculation of the recovery of the costs in the ER rate, and only noted that \$820 was classified as 'other costs' when it should have been in 'legal' (Ex. 5, at 4). The Company has agreed to make the necessary adjustments, but this adjustment will have no impact on the overall rate.

12. Staff witness Jegede also reviewed the application and schedules filed by the Company and supervised the audit performed by Ms. Pasky (Ex. 6, at 2).

13. Based upon her examination, Ms. Jegede concluded that the Company's application should be approved because the rider was calculated in a manner consistent with the Commission's approved methodology (Ex. 6, at 6).

14. Ms. Jegede expressed her concern about the amount of funds received by the Company in the GPU litigation in comparison to the amount of legal costs incurred and the confidential nature of certain information filed by the Company in this and previous

dockets. Nevertheless, Ms. Jegede, as noted above, recommended approval of the application. In response to Staff's concern about the confidentiality of certain exhibits filed by the Company in this docket, the Company agreed at the outset of the hearing to withdraw its claim of confidentiality with respect to all of the testimony and exhibits filed in this docket and made part of the record at the evidentiary hearing (Tr. at 14-15).

IV. DISCUSSION

14. This Commission has jurisdiction over this proceeding pursuant to 26 Del. C. § 306.

15. The Company's recovery of environmental remediation costs associated with the former Dover Gas Light coal gasification site first was raised as an issue before this Commission in the Company's 1985 base rate proceeding in Docket No 85-17. Since then it has been addressed in several other dockets, including PCS Order No. 2728 at Docket No. 85-17 (Issued March 25, 1986), PSC Order No. 2907 (Issued December 15, 1987) at Docket No. 87-32, PSC Order No. 3299 (Issued July 30, 1991) at Docket No. 90-14, PSC Order No. 3570 (Issued February 23, 1993) at Docket No. 93-20, and PSC Order No. 4104 (Issued December 19, 1995) at Docket No. 95-73. PSC Order No. 4104 established the present cost recovery mechanism to allow annual pass through cost recovery through a rate rider that uses a rolling five-year amortization of actual costs. In PSC Order No. 5932 issued April 16, 2002, the Commission approved a settlement that allowed the

Company to recover through this rate mechanism, the one-time remaining unrecovered costs associated with the Smyrna Gas site as well.

16. The present case entails a review of the Company's ninth annual application under the annual cost recovery mechanism. The mechanism allows the Company to recover its costs through a rolling five-year amortization. In last year's proceeding, the Commission learned of the conclusion of the GPU/First Energy litigation with a pending settlement, which at the time was under review by a federal court. This settlement has been consummated, and this year's application reflects the payments made under the settlement and the elimination of the fourth year's costs as fully recovered, subject to reconciliation. The current year's costs from the Dover site are continuing to decline.

17. The Company provided an update on its environmental litigation against First Energy, and the remediation efforts at the Dover site. The Dover site has been cleaned, a parking lot was installed last year, and the settlement in the environmental litigation completed. The consummation of the settlement has significantly reduced the costs to be recovered in future filings and the present filing reflects a large decrease.

18. I find that the Company presented adequate substantial evidence, sponsored by Mr. Tietbohl and Ms. Clausius, in support of its claimed costs. Staff found one small error

that the Company accepted, but which did not affect the rate. Specifically, Staff's review found that the application is consistent with the approved methodology for recovery of environmental costs.

19. In sum, there is substantial record evidence to support the application. Accordingly, I find that the Company's proposed ER rate is just and reasonable and consistent with the Commission's approved cost recovery methodology. While the Staff has expressed some concern about the amount recovered by the Company in the GPU litigation compared to the amount of legal expenses incurred by the Company, Mr. Tietbohl, in his rebuttal testimony, noted that in addition to the dollars received by the Company under the settlement, the Company received a release from the EPA and DNREC regarding future remediation costs (Ex. 3). While the release contains the standard re-openers typically included in such releases with the EPA, according to Mr. Tietbohl, the release has substantial value to the Company and its customers in terms of no costs to be incurred in the future with respect to groundwater remediation. Moreover, the Staff has recommended the approval of the application. As such, I recommend that the Commission approve the application.

V. RECOMMENDATION

20. In summary, and for the reasons discussed above, I propose and recommend to the Commission that the application of

Chesapeake Utilities Corporation to revise its Environmental Rider tariff to a rate of \$0.0098 per Ccf be approved, effective for service on and after December 1, 2003, and that the Company be directed to file such tariffs as needed consistent with the Commission Order. A draft order is attached hereto as Appendix A.

Respectfully submitted,

/s/ Robert P. Haynes

Robert P. Haynes

Hearing Examiner

Dated: September 20, 2004.